

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Duke and King Acquisition Corp.

Debtor.

Case No. 10-38652
Chapter 11

Duke and King Missouri, LLC

Debtor.

Case No. 10-38653
Chapter 11

Duke and King Missouri Holdings, Inc.

Debtor.

Case No. 10-38654
Chapter 11

Duke and King Real Estate, LLC

Debtor.

Case No. 10-38655
Chapter 11

DK Florida Holdings, Inc.

Debtor.

Case No. 10-38656
Chapter 11

STIPULATION OF ADMISSIBILITY AND FACTS

This stipulation is made this 7th day of December, 2010, by and between the above-captioned debtors (each a “Debtor” and collectively, the “Debtors”), and Bank of America, N.A. (“Bank of America” and together with the Debtors, the “Parties”), and is entered into in connection with the Debtors’ Joint Motion For (I) Expedited Relief And (II) Interim And Final Orders (A) Authorizing Debtors’ Use Of Unencumbered Cash Or, In The Alternative, Cash Collateral And (B) Granting Adequate Protection (the “Motion”).

Recitals

WHEREAS, Bank of America has entered into numerous financing agreements with the Debtors, pursuant to which Bank of America and the Debtors have executed various security agreements, leasehold mortgages, notes, and other documents;

WHEREAS, the Debtors have filed the Motion, and Bank of America has indicated its intention to file an objection to the Motion;

WHEREAS, the resolution of the Motion and Bank of America's objection require reference to certain documentary evidence;

WHEREAS, the Parties desire to stipulate to the admissibility of certain documentary evidence;

WHEREAS, the Parties further desire to stipulate to the amounts owed by the Debtors to Bank of America as of the commencement of these bankruptcy cases;

NOW, THEREFORE, the Parties, by and through their respective attorneys, hereby agree and stipulate as follows:

Stipulation

1. The Parties stipulate and agree that following documents shall be admitted into evidence in connection with the Debtors' bankruptcy cases:
 - a. Credit Agreement dated as of November 1, 2006, by and among Duke and King Acquisition Corp. ("DK Acquisition"), Duke and King Florida, LLC ("DK Florida"), certain lenders, and Bank of America, as administrative agent (as amended, the "Credit Agreement"). The Parties stipulate that a true and correct copy of the Credit Agreement is attached hereto as Exhibit A.
 - b. First Amendment to Credit Agreement dated as of March 1, 2007, between DK Acquisition, DK Florida, certain lenders, and Bank of America, as administrative agent (the "First Amendment"). The Parties stipulate that a true and correct copy of the First Amendment is attached hereto as Exhibit B.
 - c. Second Amendment to Credit Agreement dated as of February 24, 2009, between DK Acquisition, DK Florida, Duke and King Real Estate, LLC ("DK Real

Estate”), Duke and King Missouri (“DK Missouri”) and Bank of America, as administrative agent (the “Second Amendment”). The Parties stipulate that a true and correct copy of the Second Amendment is attached hereto as Exhibit C.

- d. Security Agreement dated as of March 1, 2007, between DK Acquisition, DK Florida, DK Real Estate, DK Missouri, and Bank of America, as administrative agent (the “2007 Security Agreement”). The Parties stipulate that a true and correct copy of the 2007 Security Agreement is attached hereto as Exhibit D.
- e. Term Note A dated as of November 1, 2006, executed by DK Acquisition and DK Florida in favor of Bank of America, in the amount of \$15,000,000 (“Term Note A”). The Parties stipulate that a true and correct copy of Term Note A is attached hereto as Exhibit E.
- f. Term Note C dated as of March 1, 2007, executed by DK Real Estate, DK Missouri, DK Acquisition, and DK Florida in favor of Bank of America in the amount of \$5,826,000 (“Term Note C”). The Parties stipulate that a true and correct copy of Term Note C is attached hereto as Exhibit F.
- g. Amended and Restated Acquisition Note dated as of March 1, 2007, executed by DK Real Estate, DK Missouri, DK Acquisition, and DK Florida in favor of Bank of America in the amount of \$3,500,000 (the “Amended and Restated Acquisition Note”). The Parties stipulate that a true and correct copy of the Amended and Restated Acquisition Note is attached hereto as Exhibit G.
- h. UCC Financing Statement number 64199345, filed with the Delaware Department of State on December 4, 2006 by Bank of America, against DK Acquisition (the “DK Acquisition Financing Statement”). The Parties stipulate that a true and correct copy of the DK Acquisition Financing Statement is attached hereto as Exhibit H.
- i. UCC Financing Statement number 64199071, filed with the Delaware Department of State on December 4, 2006 by Bank of America, against DK Florida, as amended by UCC Financing Statement Amendment 2007 2753522, filed with the Delaware Department of State on July 20, 2007 (as amended, the “DK Florida Financing Statement”). The Parties stipulate that a true and correct copy of the DK Florida Financing Statement is attached hereto as Exhibit I.
- j. UCC Financing Statement number 4000492, filed with the Delaware Department of State on October 23, 2007 by Bank of America, against DK Real Estate (the “DK Real Estate Financing Statement”). The Parties stipulate that a true and correct copy of the DK Real Estate Financing Statement is attached hereto as Exhibit J.
- k. UCC Financing Statement number 4000690, filed with the Delaware Department of State on October 23, 2007 by Bank of America, against DK Missouri (the “DK

Missouri Financing Statement”). The Parties stipulate that a true and correct copy of the DK Missouri Financing Statement is attached hereto as Exhibit K.

- l. Leasehold Mortgage, Assignment of Leases and Rents and Fixture Filing dated November 1, 2006 by DK Acquisition in favor of Bank of America, recorded December 1, 2006 as Doc No 1987723 Ramsey County, MN (Unit 4116) in Ramsey County, Minnesota, as document # 1987723 (the “Sample Leasehold Mortgage”). The Parties stipulate that a true and correct copy of the Sample Leasehold Mortgage is attached hereto as Exhibit L.
 - m. Fixture Financing Statement filed with the DeKalb County, IL Recorder on November 22, 2006 as Document No. 2006-021882; B133376 (Unite 5971, Sycamore, IL) by Bank of America against DK Acquisition (the “Sample Fixture Financing Statement”). The Parties stipulate that a true and correct copy of the Sample Fixture Financing Statement is attached hereto as Exhibit M.
 - n. Index of the remaining Leasehold Mortgages and Fixture Financing Statements (the “Index”). The Parties stipulate that a true and correct copy of the Index is attached hereto as Exhibit N.
 - o. ISDA Master Agreement and Schedule between Bank of America and DK Acquisition, dated as of November 10, 2006, together with three Confirmations, each dated as of March 6, 2007 (collectively, the “Swap Agreement”). The Parties stipulate that a true and correct copy of the Swap is attached hereto as Exhibit O.
 - p. Limited License Agreement dated as of June 30, 2010 between Burger King Corporation (“BKC”), DK Acquisition, DK Missouri, DK Holdings, Roger Head (“Head”), Robert Murphy (“Murphy”), and Thomas Metzger (“Metzger”) (the “Limited License Agreement”). The Parties stipulate that a true and correct copy of the Limited License Agreement is attached hereto as Exhibit P.
 - q. First Amendment to Limited License Agreement between BKC, DK Acquisition, DK Missouri, DK Holdings, Head, Murphy, and Metzger (the “Amendment to Limited License Agreement”). The Parties stipulate that a true and correct copy of the Limited License Agreement is attached hereto as Exhibit Q.
 - r. Burger King Restaurant Successor Franchise Agreement (Entity) dated as of November 30, 2006, between BKC, and DK Acquisition (the “Franchise Agreement”). The Parties stipulate that a true and correct copy of the Franchise Agreement is attached hereto as Exhibit R.
2. The Parties further stipulate and agree that, as of December 3, 2010:

- a. DK Acquisition and DK Florida owed Bank of America \$9,247,143.80 in principal, plus accrued interest and late charges in an amount to be determined Pursuant to the Credit Agreement and Term Note A.
- b. DK Acquisition, DK Missouri, and DK Florida owed Bank of America \$1,655,283 in principal, and \$875.36 in interest pursuant to the Credit Agreement and Term Note C.
- c. DK Acquisition, DK Real Estate, DK Missouri, and DK Florida owed Bank of America \$24,030.73 in principal, \$286.60 in interest, and \$272.19 in late charges pursuant to the Credit Agreement and the Amended and Restated Acquisition Note.

Dated: December 7, 2010

FAEGRE & BENSON

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*Proposed Co-Counsel for Debtors and Debtors
in Possession*

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CERTIFICATE OF SERVICE

Jessica Anderson of the City of Minneapolis, County of Hennepin, State of Minnesota, under penalty of perjury, states that on December 7, 2010, she served the Stipulation of Admissibility and Facts on the parties who requested electronic service in these cases by Notice of Electronic Filing via ECF with the Bankruptcy Court in the District of Minnesota.

Dated: December 7, 2010

/s/ Jessica Anderson
Jessica Anderson